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HOUSE BILL 242

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Ben Lujan

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

**RELATING TO TAXATION; EXPANDING ELIGIBILITY FOR AND ADDING
REQUIREMENTS TO THE FILM PRODUCTION TAX CREDIT.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 7-2F-1 NMSA 1978 (being Laws 2002,
Chapter 36, Section 1, as amended) is amended to read:**

"7-2F-1. FILM PRODUCTION TAX CREDIT. --

**A. The tax credit created by this section may be
referred to as the "film production tax credit". An eligible
film production company may apply for, and the taxation and
revenue department may allow, a tax credit in an amount equal
to fifteen percent of:**

**(1) direct production expenditures made in New
Mexico that are directly attributable to the production in New
Mexico of a film and that are subject to taxation by the state**

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1 of New Mexico; or

2 (2) postproduction expenditures made in New
3 Mexico that are:

4 (a) directly attributable to the
5 production of a commercial audiovisual product;

6 (b) for services performed in New
7 Mexico; and

8 (c) subject to taxation by the state of
9 New Mexico.

10 B. The film production tax credit shall not be
11 claimed with respect to expenditures for which the film
12 production company has delivered a nontaxable transaction
13 certificate pursuant to Section 7-9-86 NMSA 1978.

14 C. A long-form narrative film production for which
15 the film production tax credit is claimed pursuant to Paragraph
16 (1) of Subsection A of this section shall contain an
17 acknowledgment that the production was filmed in New Mexico.

18 D. To be eligible for the film production tax
19 credit, a film production company shall submit to the New
20 Mexico film division of the economic development department
21 information required by the division to demonstrate conformity
22 with the requirements of this section and shall agree in
23 writing:

24 (1) to pay all obligations the film production
25 company has incurred in New Mexico;

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1 (2) to publish, at completion of principal
2 photography, a notice at least once a week for three
3 consecutive weeks in local newspapers in regions where filming
4 has taken place to notify the public of the need to file
5 creditor claims against the film production company by a
6 specified date;

7 (3) that outstanding obligations are not
8 waived should a creditor fail to file by the specified date;
9 and

10 (4) to delay filing of a claim for the film
11 production tax credit until the New Mexico film division
12 delivers written notification to the taxation and revenue
13 department that the film production company has fulfilled all
14 requirements for the credit.

15 E. The New Mexico film division shall determine the
16 eligibility of the company and shall report this information to
17 the taxation and revenue department in a manner and at times
18 the economic development department and the taxation and
19 revenue department shall agree upon.

20 ~~[E.]~~ F. To receive a film production tax credit, a
21 film production company shall apply to the taxation and revenue
22 department on forms and in the manner the department may
23 prescribe. The application shall include a certification of
24 the amount of direct production expenditures or technology
25 expenditures made in New Mexico with respect to the film

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1 production for which the film production company is seeking the
2 film production tax credit. If the requirements of this
3 section have been complied with, the taxation and revenue
4 department shall approve the film production tax credit and
5 issue a document granting the tax credit.

6 ~~[F.]~~ G. The film production company may apply all
7 or a portion of the film production tax credit granted against
8 personal income tax liability or corporate income tax
9 liability. If the amount of the film production tax credit
10 claimed exceeds the film production company's tax liability for
11 the taxable year in which the credit is being claimed, the
12 excess shall be refunded."

13 Section 2. Section 7-2F-2 NMSA 1978 (being Laws 2003,
14 Chapter 127, Section 2) is amended to read:

15 "7-2F-2. DEFINITIONS.--As used in Chapter 7, Article 2F
16 NMSA 1978:

17 A. "commercial audiovisual product" means a film or
18 a videogame intended for commercial exploitation;

19 ~~[A.]~~ B. "direct production expenditure" means a
20 transaction that is subject to taxation in New Mexico,
21 including:

22 (1) payment of wages, fringe benefits or fees
23 for talent, management or labor to a person who is a New Mexico
24 resident for purposes of the Income Tax Act;

25 (2) payment to a personal services corporation

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1 for the services of a performing artist if:

2 (a) the personal services corporation
3 pays gross receipts tax in New Mexico on those payments; ~~[or]~~
4 and

5 (b) the performing artist receiving
6 payments from the personal services corporation pays New Mexico
7 income tax; and

8 (3) any of the following provided by a vendor:

9 (a) the story and scenario to be used
10 for a film;

11 (b) set construction and operations,
12 wardrobe, accessories and related services;

13 (c) photography, sound synchronization,
14 lighting and related services;

15 (d) editing and related services;

16 (e) rental of facilities and equipment;

17 (f) leasing of vehicles;

18 (g) food or lodging;

19 (h) airfare if purchased through a New
20 Mexico-based travel agency or travel company;

21 (i) insurance coverage and bonding if
22 purchased through a New Mexico-based insurance agent; and

23 (j) other direct costs of producing a
24 film in accordance with generally accepted entertainment
25 industry practice;

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1 ~~[B.]~~ C. "film" means a single media or multimedia
2 program, excluding advertising messages other than national or
3 regional advertising messages intended for exhibition, that:

4 (1) is fixed on film, digital medium,
5 videotape, computer disc, laser disc or other similar delivery
6 medium;

7 (2) can be viewed or reproduced;

8 (3) is not intended to and does not violate a
9 provision of Chapter 30, Article 37 NMSA 1978; and

10 (4) is intended for reasonable commercial
11 exploitation for the delivery medium used; ~~[and~~

12 ~~E.]~~ D. "film production company" means a person
13 that produces one or more films;

14 E. "postproduction" means the final stage in the
15 production of a film that occurs after the completion of
16 principal and ongoing photography and includes editing, Foley
17 recording, automatic dialogue replacement, sound editing,
18 special effects, scoring and music editing, beginning and end
19 credits, negative cutting, soundtrack production, dubbing,
20 subtitling and addition of sound or visual effects, but does
21 not include advertising, marketing or expense payments; and

22 F. "production" means the principal and ongoing
23 photography, including the filming of significant portions of a
24 film that involve an actor, that occurs before commencement of
25 postproduction. "

1 Section 3. EFFECTIVE DATE. --The effective date of the
2 provisions of this act is July 1, 2005.

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